No. 82-1832

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TOWN OF HALLIE, TOWN OF SEYMOUR, TOWN OF UNION and TOWN OF WASHINGTON,
Petitioners,

v.

CITY OF EAU CLAIRE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF *AMICUS CURIAE* OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS IN SUPPORT OF RESPONDENT CITY OF EAU CLAIRE

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INTEREST OF THE AMICUS CURIAE

This brief *amicus curiae* is filed pursuant to Rule 36.4 of the Supreme Court Rules. The municipal attorneys who have signed this brief are signing on behalf of the municipalities they represent as well as on behalf of NIMLO.

The National Institute of Municipal Law Officers [NIMLO] is a national organization of municipalities operated by their attorneys. NIMLO, founded in 1935 and organized as a nonprofit, nonpartisan association, consists of 1700 local governmental units, or political subdivisions of states, which participate in NIMLO's work through their chief legal officers, variously called city or

county attorney, corporation counsel, city solicitor or law director, and other titles. The city of Eau Claire, Wisconsin is a member of NIMLO.

NIMLO is a nonpolitical, fact-gathering and reporting organization which provides information services and research to its member local governments on current legal problems of particular concern to municipalities, including federal antitrust matters and intergovernmental relations issues.

The local government attorneys who operate NIMLO are responsible for advising municipalities on the antitrust implications of municipal activities in all areas, including licensing, franchising, land use, waste disposal, business regulation, purchasing, and the provision of essential governmental services. The municipal attorneys are also responsible for defending the actions of their governments when challenged in court. Therefore, these attorneys are keenly aware of the great uncertainty in the law regarding the application of antitrust business principles to nonprofit governmental activities, and have witnessed firsthand the upheavals wrought by this Court's decisions in *City of Lafayette v. Louisiana Power and Light Co.*, 435 U.S. 389 (1978), and *Community Communications v. City of Boulder*, 455 U.S. 40 (1982).

NIMLO recognizes that a test for governmental antitrust immunity which requires continuing, specific, detailed, direct and technical state-level authorization and supervision of local governmental activities is unworkable and out of touch with the reality of state and local governmental relations. Therefore, NIMLO respectfully urges this Court to affirm the decision below, which strikes a proper balance between the needs of local governments and the interests of federal antitrust policy and, perhaps more importantly, correctly analyzes the relationship between a state and its political subdivisions under the federal antitrust laws.

Consent to the filing of this brief has been granted by both parties. Copies of these letters of consent have been lodged with the Clerk of this Court.

STATEMENT OF THE CASE

The Statement of the Case set forth in Respondent City of Eau Claire's brief on the merits is adopted by the National Institute of Municipal Law Officers for purposes of this brief *amicus curiae*.

SUMMARY OF ARGUMENT

The application of the federal antitrust laws to legitimate governmental activities has had a crippling effect on local governments. The most visible effect has been an explosion of antitrust suits brought challenging local governmental decisions in federal court.[1] This is not necessarily the most damaging effect, however. While lawsuits are themselves dangerous because of the vast amounts of time and money involved and the attendant danger to the municipal fisc, it is the *threat* of antitrust suits which hangs as a Sword of Damocles over local governing bodies and officials that is most troublesome. The potential of antitrust liability, standing alone, has been sufficient to result in an abdication of local decision making by local governments to those who wield economic and political power sufficient to threaten antitrust lawsuits. Regulatory matters, such as zoning and licensing, are being handled in

[1]The NIMLO Survey of Antitrust Suits Against Municipalities lists these cases in detail and is the Appendix to this brief.

a manner not necessarily consistent with the public interest, but instead are being decided on the basis of potential antitrust lawsuits. The fact that such lawsuits might ultimately prove groundless is almost irrelevant to the decision-making process. The public interest is not always served by unregulated and unfettered competition; other factors, such as public health, safety, and welfare, must be included in the local governmental decision-making process. Local government is the unit of government most intimately involved in the myriad daily activities of the Nation's citizens, yet it is the only level of government singled out for potential antitrust liability. The tools of antitrust analysis, as developed by this Court over the last century in numerous cases dealing with private profit-making businesses, are not easily adapted to governmental activities undertaken in the public interest and not for profit.

The narrow construction of the state action immunity test urged by Petitioners is incorrect and does not recognize the reality of state and local intergovernmental relations. The Petitioners' construction is unworkable and impractical because it fails to recognize the degree to which states have desired and intended as a matter of state policy to delegate everyday decision-making authority on matters of local concern to those governmental units closest to the people.

Active state supervision is not required in order for local governments to obtain immunity from antitrust liability. Municipalities are creatures of and are controlled by their state creators. They can only undertake those activities authorized by the state. State courts should be and are the proper authorities to insure that local governments are acting within the scope of their delegated authority. The court below properly recognized the degree to which states have desired to give local governments the flexibility to

make decisions based on the particularized needs of individual communities. What some have labeled as narrow parochial interests is called by others democracy. A broad formulation of the state action immunity test is required in order for local governments to carry out their functions as desired by their state creators.

ARGUMENT

I. THE IMPACT ON THE *LAFAYETTE* AND *BOULDER* DECISIONS ON STATE AND LOCAL GOVERNMENTS

In preparation of this *amicus curiae* brief, NIMLO has undertaken a survey of its 1700 member municipalities in order to assess the impact of the *Lafayette* and *Boulder* decisions. The NIMLO Survey indicates that hundreds of antitrust suits have been filed against local governments, with damage claims totalling billions of dollars. Even though the antitrust laws were developed in order to regulate for-profit businesses, or market participants, the overwhelming majority of lawsuits filed thus far against local governments have challenged traditional municipal regulatory activities, required to be performed by local government under state law. Very few lawsuits have been filed challenging municipal activities which can broadly be characterized as involving the sale or provision of public services; those suits which have been filed in this category have generally involved services traditionally provided by local governments, such as waste disposal, emergency ambulance services, sewer services, and mass transit.

It is also becoming clear that the antitrust laws, like lawsuits brought under 42 U.S.C. §1983, are being used as a vehicle for harassment by those individuals disappointed by a government's decisions. For example, Philadelphia, Pennsylvania is currently defending an antitrust suit challenging its decision to exclude a particular band from

its Mummers Parade. Niagara Falls, New York is a defendant in an antitrust suit concerning the contents of its tourist information guide. Park City, Utah, a town with a population of 2500 people, has found itself a defendant in an antitrust suit concerning a decision over the location of a bus stop. While claims such as these might appear trivial or spurious, they certainly are not to municipal defendants. The Park City litigation has gone on for two years and has cost the city's taxpayers a quarter million dollars in attorney's fees thus far, and the case is still on appeal.

The amount of damages claimed can be truly staggering. An antitrust suit challenging Chicago, Illinois' taxicab ordinance seeks $320 million in damages, and Chicago is currently defending five other antitrust lawsuits. Richmond, Virginia has found itself a defendant in two antitrust suits seeking $255 million in damages as a result of zoning decisions. Aspen, Colorado is currently involved in litigation seeking $145 million in damages over a land use decision. Paradise Valley, Arizona's refusal to approve a subdivision map resulted in a $48 million claim. Danbury, Connecticut is involved in litigation seeking $40 million in damages regarding a gas station zoning ordinance. The tiny communities of Lisle and Woodbridge, Illinois are embroiled in litigation over a mandatory annexation-for-services ordinance seeking $75 million in treble damages. Of course, it is the local taxpayers who must ultimately pay for the defense of such claims and the judgments which can arise.[2]

[2]NIMLO is aware of only one case where a judgment was entered against a municipality in an antitrust suit. The $28.5 million judgment in *Unity Ventures v. Village of Grayslake and County of Lake, et al.* No. 81 C 2745 (N.D. Ill. filed 1981) is substantially greater than the annual budget of the village, equalling 6000% of Grayslake's annual tax levy.

The unique nature of antitrust litigation makes these suits particularly troublesome and dangerous for local government officials. First, because such lawsuits generally involve economic regulation, the amount of damage claims can be immense, particularly in the land use area. Second, the tools of antitrust analysis developed in years of litigation involving profit-making enterprises are not easily adaptable to activities undertaken in the public interest by local governments. Therefore, it is almost impossible for local officials to know in most instances whether the challenged activity in fact violates the antitrust laws. Third, because, in antitrust litigation, "dismissals prior to giving the plaintiff ample opportunity for discovery should be granted sparingly", *Hospital Building Company v. Rex Hospital Trustees,* 425 U.S. 738, 740 (1976), it is likely that antitrust suits filed against local governments will be lengthy and thus costly to municipal taxpayers. Fourth, because antitrust law is so complex, most municipalities, particularly the smaller or rural ones, are compelled to hire expensive outside antitrust counsel to defend themselves adequately. The typical municipal attorney simply does not have the time or expertise to litigate against trained and experienced antitrust counsel. Fifth, because governmental action which harms one party almost invariably will be of benefit to another party,[3] it is very easy to allege that municipal officers "conspired" with the benefitted party to the detriment of the harmed party. In well over half the antitrust suits contained in the NIMLO Survey, municipal officials have been sued in-

[3]For example, the award of contracts or franchises after a bidding process. Two respondents to the Survey reported that they have been threatened with lawsuits by whichever party is not chosen to receive governmental approval for a project financed by Industrial Development Bonds.

dividually as defendants, necessitating their ongoing participation in time-consuming discovery proceedings.[4]

Local government officials faced with actual or threatened antitrust lawsuits against themselves and their municipalities as a result of actions required by state law to be undertaken in the public interest have two choices. They can choose to defend the action. This decision exposes municipal taxpayers to immense potential liability and will cost substantial amounts of money in defense costs. Antitrust conspiracies are easy to allege and, because antitrust litigation almost always proceeds at least through discovery, the suit in all likelihood will drag on for years. Given the complete uncertainty of antitrust law as applied to local governments,[5] the ultimate outcome would be impossible to predict, and even should the municipality ultimately prevail, it would still have to bear all of its own defense costs.

The second choice available to government officials is to give in to the desires of the antitrust claimant and avoid all the potential costs and risks posed by the antitrust litigation. Instead of taking action in the public interest, the municipality, by choosing the safe way out for its taxpay-

[4]Discovery in municipal antitrust suits can be very troubling for local officials, many of whom serve for little or no compensation. The city attorney from Marquette, Michigan reported in the NIMLO Survey that a city commissioner resigned after spending days being deposed by as many as twelve attorneys during discovery proceedings in an antitrust suit brought against Marquette. In one suit in Illinois, 47 past or present members of various municipal governing boards, as well as two mayors, are currently defendants in a case. *LaSalle National Bank, et al. v. County of Lake, et al.*, No. 81 C 3010 (N.D. Ill.).

[5]The antitrust implications of exclusive franchises, monopoly public services, taxicab fare regulations, licensing restrictions, restrictive zoning laws, and a myriad of other common municipal regulatory activities have never been determined in court.

ing citizens, abdicates its decision-making authority and responsibility to those parties which have the economic power to threaten the local government with an antitrust lawsuit.

Giving in to the demands of the antitrust claimant is not always a viable alternative for municipalities. Disappointed bidders for municipal contracts and franchises can always allege a conspiracy between the successful bidder and the municipality. Property owners rebuffed in their efforts to seek a zoning change for their property can easily allege a conspiracy among other property owners and the city. There is no way for the municipality to avoid undertaking actions which invite antitrust challenges; state laws impose upon them a duty to act.

The NIMLO Survey has also revealed other effects on legitimate governmental activities, apart from actual or threatened litigation, as a result of the *Lafayette* and *Boulder* decisions. Municipalities have become reluctant to develop programs designed, with the best of intentions, to promote the public health, safety, and welfare, for fear of potential antitrust litigation.

For example, Traverse City, Michigan refused to implement a program of low interest loans for home insulation and electric appliance service because of a fear of antitrust liability. The city has also dropped its program of selling garbage bags to its citizens. Moline, Illinois has abandoned plans to construct a regional resource recovery facility and has delayed municipal hospital merger discussions. Fremont, California has refused to implement a program involving firefighter paramedics because of a fear of antitrust exposure. Urbana, Illinois has been unable to construct a waste powered steam incinerator as an alternative to a landfill because antitrust concerns have made it im-

possible to guarantee a sufficient flow of garbage to support the system. The system was designed to supply energy to the University of Illinois. Similarly, Springfield, Missouri has been unable to implement a solid waste resource recovery system. Marin County, California has delayed awarding a needed exclusive franchise for emergency ambulance service because of potential antitrust considerations, and Paradise Valley, Arizona reported that it abandoned plans to implement an emergency home alarm monitoring service by its police department for the same reason.

Well over half of the Survey respondents reported in a more general way that fear of antitrust liability has "chilled" the local government decision-making process or adversely affected the municipality's ability to act in the public interest. As one Survey respondent stated, "even public safety has to take a back seat to antitrust considerations." Whatever antitrust experts might say about the unlikelihood of a municipality and its officials ultimately being found liable for violating federal antitrust laws, the current reality for local governments is one of fear and trepidation.

II. THE CONSTRUCTION OF THE STATE ACTION EXEMPTION TEST URGED BY PETITIONERS IGNORES THE REALITY OF STATE AND LOCAL INTERGOVERNMENTAL RELATIONS AND VIOLATES IMPORTANT PRINCIPLES OF FEDERALISM

Petitioners urge this Court to adopt an interpretation of the state action immunity test which ignores the reality of state and local intergovernmental relations and violates important principles of federalism. All the parties generally agree that a local government is immune from the antitrust laws when it is acting pursuant to a "state policy" to

displace competition which is "clearly articulated and affirmatively expressed." See *Community Communications v. Boulder*, 455 U.S. 40 (1982). The question before this Court is to determine what is meant by "state policy" and "clearly articulated and affirmatively expressed."

State policy can manifest itself in many ways. A state can have a policy of strictly regulating various aspects of local governmental activity or a state can have a policy of permitting local governments some leeway in determining how to carry out their functions. The modern trend is clearly for states to remove themselves from most aspects of local regulation and concern themselves with matters of statewide concern. When one realizes that there are over 80,000 units of local government in the United States,[6] it is obvious why state legislatures have chosen to remove themselves from most matters of local interest. State legislatures, meeting for an average of less than ninety days per year,[7] cannot possibly carry out their functions if they have to regulate, in detail, matters of purely local interest. Recognizing this, most states have adopted a policy of increasing local autonomy, giving each unit of local government the authority to decide for itself how to operate within its own regulatory sphere. A state's decision to grant local authority and discretion is no less a declaration of state policy than is a decision to delegate to political subdivisions through specific and detailed grants of authority. State courts stand ready to correct any inequities and improprieties caused by local governments' actions.

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[6] INTERNATIONAL CITY MANAGEMENT ASSOCIATION, MUNICIPAL YEARBOOK 1984 at 7 (1984).

[7] COUNCIL OF STATE GOVERNMENTS, THE BOOK OF STATES 1984-1985 at 104-05 (1984).

The question then arises as to what is meant by "clearly articulated and affirmatively expressed." It is clear from the precedents of this Court that clear and affirmative expression of anticompetitive intent does not require that the state compel or require the anticompetitive conduct. *City of Lafayette v. Louisiana Power and Light Co.*, 435 U.S. 389, 415-18 (1978).[8] The grant of governmental powers requires that local governments be given the discretion necessary to carry out their delegated authority; therefore the state need only contemplate a particular anticompetitive activity. Compulsion destroys discretion, and this Court cannot have intended to prohibit states from giving discretionary authority to their political subdivisions. The correct focus is on state authorization and intent, not state compulsion.[9]

If the clear articulation requirement somehow requires a specific reference to a statute or regulation containing anticompetitive language, or reference to the antitrust laws themselves, then the requirement is nonsensical. Until 1978, it was assumed that political subdivisions, like their state creators, were exempted from antitrust liability. Because of this, state legislatures, when drafting statutes and regulations granting broad authority to political subdivisions, had no reason to make explicit statutory reference to the antitrust laws or to specific anticompetitive

[8]". . . [I]t is not necessary to point to an express statutory mandate for each act which is alleged to violate the antitrust laws. It will suffice if the challenged activity was clearly within legislative intent. Thus a trial judge may ascertain, from the authority given a governmental entity to operate in a particular area, that the legislature contemplated the kind of action complained of." *Id.* at 393-94. See also, *Community Communications v. City of Boulder*, 435 U.S. at 56-57 (1982).

[9]Petitioners' "necessarily follows" theory, Brief of Petitioners at 27, is merely a restatement of the already rejected compulsion argument.

policies. This Court cannot have intended in *Lafayette* and *Boulder* that states redraft all of their statutes and regulations regarding grants of authority to their political subdivisions in order to include specific reference to antitrust considerations. Instead, it must have been intended that lower courts assume that if the states authorized their political subdivisions to undertake certain conduct, then they condoned the anticompetitive restrictions which reasonably and foreseeably flowed from that conduct. This test, adopted by the court below, properly recognizes the current reality of state and local government relations by preserving the authority that states intended to give their political subdivisions. By also focusing on the reasonableness of the conduct, federal antitrust concerns are addressed. The test proposed by the Petitioners would effectively eviscerate the grants of authority which states desired and intended to give to their local governments, and exalts competition over all forms of local governmental regulation, no matter how reasonable that conduct may be.

Petitioners' theory also poses substantial federalism problems. The fundamental policy underlying *Parker v. Brown*, 317 U.S. 341 (1943), and its state action progeny is that state action should not be subject to antitrust scrutiny. Therefore, when the municipality's conduct is authorized by the state, it should be afforded protection from the federal antitrust laws.

State sovereignty is impaired when the federal courts dictate to states the manner in which they choose to delegate authority to their political subdivisions. The state action doctrine is a judicial creation and does not have its basis in express statutory language. Courts should be extremely cautious in applying such a doctrine in a manner

which intrudes on the states' fundamental right to allocate power to their political subdivisions in the manner they see fit.

III. ACTIVE STATE SUPERVISION IS NOT REQUIRED FOR A STATE'S POLITICAL SUBDIVISIONS IN ORDER FOR THE STATE ACTION DOCTRINE TO APPLY

Once it has been determined that a local government's alleged anticompetitive conduct is authorized by the state and is clearly articulated and affirmatively expressed as state policy, there is no need for active state supervision.

While this Court has required active state supervision of private conduct, it has explicitly left open the question of state supervision as applied to local governmental conduct. *California Retail Liquor Dealers Association v. Midcal Aluminum,* 445 U.S. 97 (1980); *Community Communications v. City of Boulder,* 455 U.S. at 51.

NIMLO does not believe that the drafters of the several federal antitrust statutes intended to reconstitute the forms of the various state governments by requiring that they establish a level of bureaucracy they do not desire to supervise the daily activities of their subordinate levels of government. Nor does NIMLO believe that active state supervision is wise policy.

An active state supervison requirement would require states to establish a State Board of Zoning to review every land use decision made by local governments; a State Franchising and Licensing Board to review every licensing and franchising decision taken by municipal authorities; a State Water and Sewer Board to review every decision and regulation of local water and sewer authorities; and a State Airport Authority to review the activities of local public

airport operators. And not all antitrust lawsuits fit into such neat categories, such as the Park City, Utah case involving an antitrust challenge to a bus stop location. Would a State Bus Stop Authority be required to supervise a local transit authority's bus stop location decisions?

Of course, all of these boards of review would require large staffs in order to supervise actively the thousands of local government decisions subject to antitrust review. Local governments would have to establish equally large staffs in order to plead their cases before the various state agencies, which would be unfamiliar with the local conditions which led to the initial decision. A party to the proceedings who was disappointed by the decision could then seek a judicial remedy, with the state itself a defendant in a case that is really a matter purely of local concern. The implementation of the local government's decison would have to be delayed as it wound its way through the state bureaucracy. In short, the active state supervision requirement would change the face of state and local government relations, and change it substantially for the worse.

The federalism problems created by such a scenario are clear. The authority to act in local matters currently possessed by local governments would be eviscerated. This authority was granted to local governments in the first place either by the various state legislatures or by the people themselves through their state constitutions. The antitrust laws were not intended to reallocate this power.

Petitioners argue forcefully that local governments should be treated in the same manner as private entities for purposes of the active state supervision requirement. A recent decision from the Maine Supreme Court states clearly the reason that the active state supervison is not required for local government activities:

> Towns and cities are mere agencies of the State. They are purely creatures of the Legislature and their powers and duties are within its control. . . . [That control] is absolute and all embracing except as expressly or by necessary implication limited by the Constitution. *City of South Portland v. State of Maine*, 476 A.2d 690 (Me. 1984).

See also 2 E. McQUILLIN, MUNICIPAL CORPORATIONS § 4.03 (3d ed. 1979); *Williams v. Baltimore*, 289 U.S. 36 (1933); *Trenton v. New Jersey*, 262 U.S. 782 (1923). Private businesses clearly are not agencies or creatures of the state, nor are they controlled by the state.

Throughout their brief, Petitioners emphasize that the state action doctrine should be applied identically to private entities and local governments. This fails to recognize an obvious point: a state's interest in regulating its political subdivisions is far greater than its interest in regulating private business entities which happen to be located within its borders. A political subdivision carries out its state's policies each time it acts, because the political subdivision is created and controlled by the state. When a private, for-profit business acts, it is carrying out its own interests and policies.

The rationale for the active state supervision requirement is to avoid situations whereby private parties, acting pursuant to a clearly articulated and affirmatively expressed state policy to displace competition with regulation, abuse the anticompetitive power given them by the state. In striking down a state law because it created a private price-setting mechanism which the state did not actively supervise, the Court stated, "[t]he national policy in favor of competition cannot be thwarted by casting such a gauzy

cloak of state involvement over what is essentially a private [anticompetitive activity]." *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 455 U.S. at 105. Active state supervision of private parties insures that their conduct is sufficiently state action to be immune from antitrust challenges.

This function is already served when local governments meet the "clear articulation" requirement. Local governments can exercise only those powers expressly delegated to them by the state. Clear articulation is for local governments what active state supervision is for private parties. As one leading commentator has stated:

> . . .[R]equiring state authorization for local conduct is analogous to requiring active supervision of private conduct; it tests whether challenged local activity is truly state action and therefore entitled to immunity. AREEDA, ANTITRUST LAW ¶212.2a, at 47 (1982 Supplement).

Active state supervision insures that there is public participation and control over private anticompetitive restraints. Municipal officials are generally accountable politically for their activities, and state sunshine laws and open meetings acts insure that there is public participation in the local government's decision-making processes. State and public control over local governmental activity is inherent, but such is not the case with private parties. That is why private parties are subject to active state supervision and why local governments should not be so subject.

CONCLUSION

The federal antitrust laws should not be used as anticorruption statutes. The Hobbs Act,[10] The Racketeer Influenced and Corrupt Organizations Act,[11] the Civil Rights Act of 1871[12] and other state and federal anticorruption and open government laws already serve this purpose. The court below properly balanced the federal interest in competition, as embodied in the various federal antitrust statutes, with the state's interest in delegating discretionary authority to its political subdivisions. NIMLO respectfully requests that the decision below be affirmed.

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[10] 18 U.S.C. §1951 et seq.
[11] 18 U.S.C. §§1961-1968.
[12] 42 U.S.C. §1983.

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September 1984

NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS SURVEY OF ANTITRUST SUITS AGAINST MUNICIPALITIES

September 1984

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INTRODUCTION

NIMLO solicited this information from its 1700 member municipalities. Because there are over 80,000 units of local government, the Survey is not meant to include all municipal antitrust litigation. However, the NIMLO Survey does constitute a broad representative sampling of the cases.

The NIMLO Survey lists 160 municipal antitrust suits, the overwhelming majority of which have been instituted since 1981. The total damages claimed are in excess of $4.9 billion, exclusive of the 100 suits which do not contain a prayer for a specific amount of damages, or for which the damage claims are not known by NIMLO.

SUMMARY OF THE RESULTS OF THE NIMLO SURVEY ON ANTITRUST

Breakdown by Subject on Antitrust Suits Against Municipalities and Damages Claimed Where Available

Cable Television Regulation

1. *Community Communications* v. *Boulder,* 102 S. Ct. 835 (1982) (damages unknown).

Boulder, Colorado, a city with very broad home rule powers, sought to prevent the existing cable franchise from expanding into new areas of municipality pending applications from other cable television companies. To accomplish this, the city passed a 90 day moratorium on expansion of cable television operations. The franchisee then brought suit under various antitrust theories.

HELD: The broad delegation of general home rule powers by the state to the municipality was insufficient "state action" exemption under *Parker,* 317 U.S. 341 (1943). There must be a clear articulation and affirmative expression by the state approving the municipality's anticompetitive actions. The case involved only the exemption issue and the merits were never decided.

SETTLEMENT: In exchange for the dropping of the lawsuit, the city will allow Community Communications to have nonexclusive rights to municipal utility easements for 15 years, and the company will have two years in which to expand into the entire city. Boulder will not have the right to regulate rates or programming.

2. *Melhar Corp. v. City of St. Louis,* Civ. No. 82-1064-EM (E.D.Mo. 1981), appealed to 8th Cir. Court of Appeals No. 82-1064 (damages claimed $72,000,000).

Suit concerns revocation of a franchise to operate a cable television franchise.

HELD: District Court decision dismissing the complaint, 530 F.Supp. 85 (E.D. Mo. 1981), upheld on the grounds that a state court judgment cancelling the franchise is res judicata.

3. *William Danks* v. *City and County of Denver,* No. 82-CV-0484 (D. Colo. 1982) (damages unknown).

An individual brought suit against Denver, Colorado, and various cable television companies, alleging that the proposed grant of a cable television franchise to only one cable television company was a violation of the Sherman Act. Suit was brought prior to the completion of the competitive bidding process.

HELD: Suit voluntarily dismissed by Plaintiff.

4. *Hopkinsville Cable TV* v. *Pennyroyal,* 562 F.Supp. 543 (W.D. Ky. 1982); (damages unknown).

A cable television company brought suit against the city and a competing firm, alleging that the city's award of an exclusive franchise to operate a cable television system within the city was a violation of the Sherman Act.

HELD: The District Court held, in motions prior to trial, that the award of an exclusive cable franchise fell within the *Parker* state action exemption. The court found that a state constitutional provision granting the municipality the power and responsibility to control and franchise public utilities entering the municipal marketplace was a clear articulation of state policy authorizing the exclusive franchise. The case has been appealed to the 6th Circuit Court of Appeals.

5. *Affiliated Capital* v. *City of Houston,* 735 F.2d 1555 (5th Cir. 1984) (damages not claimed against City.)

A cable television company brought suit against competing cable television companies, the city, and the mayor, alleging a conspiracy to divide territory and to prevent the plaintiff from operating a cable television franchise in the city.

HELD: Territorial division of the municipal marketplace by the mayor and competing companies was a per se violation of the Sherman Act. The mayor is entitled to the good faith immunity defense, and therefore is not individually liable.

6. *Omega Satellite Products* v. *City of Indianapolis,* 694 F.2d 119 (7th Cir. 1982) (damages unspecified).

A cable television company sued the city, alleging a right to lay cable television wires under the public way without a franchise. Another company did have a non-exclusive franchise which was awarded after a competitive bidding process which the plaintiff did not participate in.

HELD: Denial of injunction proper where plaintiffs failed to establish with probability that it would prevail on its Sherman Act claim.

7. *TCI Cablevision* v. *Jefferson City* (cite unavailable) (damages unknown).

Cable television company alleged that the revocation of its franchise and the pending award of the franchise to a new operator constituted a violation of antitrust laws.

HELD: Suit settled.

8. *CTI* v. *Jefferson City,* No. 83-4068-CV-C-5 (D.Mo. 1983) (damages claimed $280,000,000).

Suit by cable television company against municipality and another company challenging, under Sherman Act, award of non-exclusive franchise to a competitor.

HELD: Suit against city dismissed.

9. *Catalina Cablevision* v. *Tucson,* Civ. 82-459 TUC (D. Arizona 1982) (damages unknown).

Suit involves award of non-exclusive cable television franchise after intense competitive bidding process.

HELD: State statutes granting municipalities the authority to regulate cable television is an insufficient grant of authority for a state action exemption. Case on appeal to the 9th Circuit Court of Appeals.

10. *Universal Cable* v. *City of Los Angeles,* No. 82-5202 (C.D. Cal. 1982) (damages claimed $255,000,-000).

Suit brought by company engaged in cable television against municipality, mayor, and other municipal officials, alleging that defendants' failure to award them a franchise to operate violated the Clayton and Sherman Antitrust Acts.

HELD: Suit filed October 6, 1982, still pending.

11. *Century Cable* v. *City of San Buenaventura,* No. 82-5274 (C.D. Cal. 1982) (damages unknown).

Plaintiff corporation brought suit alleging that the municipality and a competing cable television corporation conspired to keep monopoly control over the television market in the city in violation of the Sherman Act.

HELD: Suit settled.

12. *Warner Amex Cable* v. *City of De Kalb,* No. 83-CH 17 (Ill. Cir. Crt.) (damages unspecified).

Suit by cable company challenging municipal activities regarding the company's desire to implement a rate increase. Suit claims the municipality and its Cable Television Board conspired against the cable company in violation of the Sherman Act.

HELD: Suit pending.

13. *Preferred Communications* v. *Los Angeles,* CV-83-5846 (C.D.Cal. 1983) (damages unspecified).

Sherman Act and Clayton Act lawsuit brought by cable television operator against municipality challenging mu-

nicipal method of awarding cable television franchises through a bidding process.

HELD: State statute giving municipalities the authority to grant cable television franchises is a sufficient grant of authority to immunize the municipality from antitrust liability. An appeal is expected.

14. *Century Federal* v. *Cities of Palo Alto, Atherton, and Menlo Park, California,* 579 F.Supp. 1553 (N.D. Cal. 1984) (damages unknown).

Sherman Act suit brought by potential cable provider challenging franchising process of defendant municipalities which calls for competitive bidding prior to the award of a single franchise.

HELD: State statute giving municipalities the authority to grant cable television franchises sufficient grant of authority for state action exemption. Since the term "franchising" connotes a degree of exclusivity, it can be inferred that the state intended to displace free competition with regulation. The exemption is available without active state supervision and, though the exclusive franchising agreement was not compelled, it was authorized.

15. *Pacific West Cable v. City of Sacramento,* No. 5-83-1034 (E.D. Cal. 1983) (damages unknown).

Sherman Act suit brought by cable operator challenging the city's request for proposals process as an artificial and unnatural monopoly and as an unreasonable restraint of trade.

HELD: Suit still pending.

16. Liberty T.V. Cable v. *City of San Bernardino,* No. 82-5432-WMB (C.D. Cal. 1982) (damages unknown).

Suit brought under Sherman Act by already franchised cable operator challenging municipality's attempt to regulate rates in accordance with the franchise agreement.

HELD: Suit settled.

17. *Matrix Enterprises* v. *Millington Telephone,* No. C-82-2343-H, (W.D. Tenn. 1983) (damages unknown).

Plaintiff cable television service providers brought suit alleging, inter alia, that the defendant municipality, defendant telephone company, and defendant current cable operator conspired to prevent plaintiff from entering the local cable television market. The complaint challenged, on antitrust grounds, municipal rate regulation, a three-percent franchise fee, a thirty-five-year franchise agreement, and restrictions on franchise transfers.

HELD: State statutes giving municipalities the "power and authority" to regulate local cable television operations is a sufficient grant of authority for the state action exemption. Statute need not require the grant of exclusive franchise; all that needs to be shown is state contemplation of actions to displace competition. Appeal to 6th Circuit expected.

18. *Acton CATV* v. *City of Duarte,* No., CV83-1018 R.G. (MCX) (C.D. Cal. 1984) (damages unknown).

De facto cable operator brought suit against the municipality under the Sherman Act after the municipality sought to revoke the franchise because of poor service and to re-issue the franchise under a competitive bidding process.

HELD: Summary judgment for defendants. The plaintiffs cannot show any anticompetitive effect, intent, or in-

jury from the city's action. In addition, state statutes similar to #14, above, immunize the city from antitrust liability. An appeal is pending in the Ninth Circuit.

19. *Video International* v. *City of Dallas and Warner-Amex Cable,* CA3-81-1772-R (N.D. Tex. 1981) (damages claimed $7,500,000).

SMATV operator brought Sherman Act suit alleging that municipal zoning ordinances prevent competition with the franchise cable operator.

HELD: Trial pending.

20. *Cox Cable* v. *Marquette, Michigan, et al.* (citation omitted) (damages unknown).

Sherman Act suit by cable operator against the city, the mayor, various city commissioners, and a competing company concerning the award of cable franchise.

HELD: Suit dismissed. (Defendants' legal expenses totalled in excess of $1 million).

21. *Claremont Communications* v. *Claremont, California,* CV-83-3084 (C.D. Cal. 1983) (damages claimed $1000).

Suit brought by cable operator alleging that any franchise requirements containing substantive requirements violate antitrust laws. The mayor and various officials have also been sued.

HELD: Suit pending.

22. *Matrixvision* v. *Bedford Heights, Ohio,* No. C84-2063 (N.D. Oh. 1984) (damages unspecified).

Suit brought by operator against city under Sherman Act after the city cancelled the franchise for failure to pay the franchise fee.

HELD: Suit still pending.

23. *Daley* v. *Durham, New Hampshire,* 733 F.2d 4 (1st Cir. 1984) (damages unspecified).

Antitrust suit brought by cable company against competitors, city and individual municipal officials challenging the award of a cable franchise.

HELD: Antitrust action dismissed for lack of removal jurisdiction.

24. *Tennessee Cable Television* v. *Memphis Light, Gas, et al.*, No. 82-3946 (D.Tenn. 1982) (damages unspecified).

Suit brought by cable association and individual cable operators against 19 local municipal utilities alleging a conspiracy with regards to rates to be charged for utility pole rental agreements.

HELD: Suit settlement discussions ongoing.

Land Use and Zoning

1. *Scott* v. *City of Sioux City,* 736 F.2d 1207 (8th Cir. 1984) (damages claimed $15,000,000).

Plaintiffs brought suit alleging that a moratorium on the issuance of building permits, and a new comprehensive zoning ordinance, combined to create a violation of federal antitrust laws. The plaintiffs were disappointed developers who were unable to construct a new shopping center as a result of the moratorium and subsequent new comprehensive zoning law.

HELD: Summary Judgment granted defendants. Affirmed on Appeal. State policy, as embodied in statutes authorizing urban renewal projects, authorized the alleged anticompetitive activities with an intent that competition be displaced. Active state supervision not needed for governmental functions.

2. *Westborough Mall* v. *City of Cape Girardeau,* 693 F.2d 733 (8th Cir. 1982) (damages claimed $180,000,000).

Plaintiff corporation had for years attempted to develop property for a shopping center but had failed to obtain tenants. A competing developer desired to construct a mall on other land in the city, and obtained the necessary rezoning from the town. Plaintiff then brought an antitrust action against the city and the competing developer.

HELD: The *Noerr-Pennington* doctrine does not protect lobbying efforts which have been accompanied by illegal or fraudulent actions. Case remanded for trial. At trial, jury verdict for the defendants. Notice of Appeal filed.

3. *Mason City Center* v. *City of Mason City,* 468 F.Supp. 737 (N.D. Ia. 1979) (damages unspecified).

Developers brought suit, alleging that the city and another developer agreed to construct a downtown shopping center and to prevent plaintiffs from constructing a regional shopping center which would compete with the downtown center. It was alleged that the city's refusal to rezone plaintiff's property to permit construction was a result of this agreement, and thus was a violation of the Sherman Act.

HELD: Jury verdict in favor of city affirmed at 671 F.2d 1146 (8th Cir. 1982).

4. *Miracle Mile* v. *City of Rochester,* 617 F.2d 18 (2d Cir. 1980) (damages claimed $49,200,000).

Developers of a shopping center brought suit against the city and a competing developer, alleging that the city's petitioning of state and federal agencies in order to insure that the developers complied with applicable environmental regulations constituted a violation of antitrust laws.

HELD: The *Noerr-Pennington* doctrine immunizes the defendants from anititrust liability for invoking administrative and judicial processes irrespective of the anticompetitive intent. See *Eastern Railroad* v. *Noeer Motor,* 365 U.S. 127 (1961) and *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965).

5. *Richmond Hilton* v. *City of Richmond,* C.A. No. 81-1100R (E.D. Va. 1981) (damages claimed $240,000,000).

Suit by developers alleging zoning laws were utilized in an anticompetitive manner in order to promote development in a redevelopment area.

HELD: The same law firm may represent both the city and the city officials sued in their individual and official capacities. Absent a showing of an actual conflict of interest among the defendants, the same firm may represent all municipal defendants. *Richmond Hilton* v. *City of Richmond,* 690 F.2d 1086 (4th Cir. 1982). The underlying suit on the merits has been settled.

6. *Canal Square* v. *City of Richmond,* C.A. No. 81-1115 (E.D. Va. 1981) (damages claimed $15,000,000).

HELD: Same as No. 5.

7. *Aspen Post* v. *Board of County Commissioners,* No. 81-1400 (D.Colo.1981) (damages claimed $135,000,000).

Developers desiring to construct hotels and condominiums in a skiing area brought suit, alleging that various governmental bodies delayed the project by refusing to issue permits and by changing the zoning laws to prevent development. It was alleged that these activities were done to promote municipally owned properties.

HELD: Suit still pending.

8. *Jonnet Development* v.*City of Pittsburgh,* 558 F.Supp. 962 (W.D. Pa. 1983) (damages unknown).

Plaintiff developer alleged a conspiracy among defendants to monopolize the hotel business in the central business district as a result of the public acquisition of a building for subsequent reconveyance to a third party for development.

HELD: Equitable relief denied under the doctrine of unclean hands. Affirmed by 3rd Circuit without an opinion. Review denied by the Supreme Court, No. 81-2274, cert. denied, 51 U.S.L.W. 3254 (Oct. 4, 1982). On the merits, 558 F.Supp. 962 (W.D. Pa. 1983), the court held that plaintiff failed to provide evidence of a contract, combination, or conspiracy in pursuit of an illegal restraint of trade. In addition, state action immunity protected the municipal defendants from liability.

9. *English Road* v. *County of San Bernardino,* No. CU82-4497 TJH (C.D. Cal. 1982) (damages unknown).

Suit by developer challenging, under the Sherman Act, the adoption of a land use plan which did not allocate to plaintiff the density for development he desired.

HELD: Suit still pending.

10. *Ossler* v. *Norridge,* 557 F.Supp. 219 (N.D. Ill. 1983).

Property owners brought suit challenging, under Sherman Act, the municipality's refusal to rezone their property and increase potential for development.

HELD: Since plaintiffs failed to allege anticompetitive motivations or consequences in the failure to rezone, the antitrust claims are insufficient.

11. *Omni Outdoor Advertising* v. *City of Columbia, et al.*, Civ. Act No. 82-2872. ($2,000,000).

Suit alleges that city and another billboard company conspired, via zoning laws, to prohibit plaintiff corporation from entering the billboard market within the municipality.

HELD: Allegations that municipality participated in a conspiracy to violate the antitrust laws defeats any claimed state action exemption. See 566 F.Supp. 1444 (D.S.C. 1983).

12. *Brontel Ltd.* v. *City of New York,* 571 F.Supp. 1065 (S.D.N.Y. 1983) (damages unspecified).

Suit brought by property owners alleging that the municipality illegally restrained trade by exempting city owned property from rent control. Suit was brought under §§1, 2, and 3 of the Sherman Act.

HELD: State statutes explicitly giving municipalities the power to adopt and administer rent control ordinances, and the authority to exempt city property from

such laws, sufficient to give municipality a state action exemption from antitrust laws. Appeal pending.

13. *Detyens* v. *Charleston,* No. 82-2071-8 (D.S.C. 1983) (damages unspecified).

Plaintiff property owner, who desired to construct a hotel on his property, brought antitrust suit alleging that the rezoning of his property prevented him from constructing a hotel on his land. It was alleged that the rezoning was done at the behest of other hoteliers in order to restrict competition.

HELD: Suit still pending.

14. *Parks* v. *Watson,* 716 F.2d 646 (9th Cir. 1983).

Sherman Act suit brought by developers challenging municipality's refusal to vacate certain platted streets unless developer dedicated to municipality land containing geothermal wells.

HELD: District Court dismissal of plaintiff's claims overturned. Factual determinations must be made as to the developer's ability to enter the geothermal energy market and as to the interstate commerce jurisdiction requirement. State statutes do not expressly declare that cities may monopolize the geothermal market; no state action exemption.

15. *Racetrac Petroleum* v. *Prince George's County,* No. R-83-3073 (D. Md. 1983) (damages claimed $10,400,000).

Suit brought under Sherman Act against county and its officials alleging a conspiracy in the denial of a special use permit to operate a gas station.

HELD: Suit still pending.

16. *Sporck* v. *Danbury, Connecticut,* No. B-80-2 (D. Ct. 1983) (damages claimed $40,000,000).

Suit brought against zoning board and its members challenging on antitrust grounds a zoning ordinance prohibiting gas stations within 1500 feet of each other.

HELD: Suit pending.

17. *LaPlace du Sommet* v. *Paradise Valley, Arizona,* (citation omitted) (damages claimed $48,000,000).

Suit brought against municipality alleging that denial of final subdivision plat approval violated antitrust laws.

HELD: Suit settled; city approved subdivision rather than contest the suit.

18. *4790 El Cajon* v. *San Diego, California,* No. 82-0509 (I) (S.D. Cal. 1982) (no damages claimed).

Suit brought against police chief and city challenging zoning ordinance requiring 1000 feet between adult entertainment establishments.

HELD: Suit voluntarily dismissed.

19. *Calton Homes* v. *Township of Princeton, New Jersey,* No. 84-2013 (damages claimed $5,000,000).

City, township attorney, planning board members and municipal council members sued for refusing to settle litigation with another named defendant involving zoning regulations.

HELD: Suit still pending.

20. *Miami International Realty* v. *Mt. Crested Butte,*

Colorado, 579 F.Supp. 68 (D. Colo. 1984) (damages claimed $1,650,000).

Sherman Act suit brought against city and its attorney, manager, and a councilman alleging a conspiracy in restraint of trade via regulations concerning sale and solicitation of time share units.

HELD: Trial set for February, 1986.

21. *Auton* v. *Dade City, Florida,* No. 84-157-CIV-T-17 (S.D. Fla. 1984) (injunctive relief only).

Sherman Act suit brought challenging ordinance which prohibits well drilling within city limits.

HELD: Suit pending for trial.

22. *Traweek* v. *San Francisco, California,* (citation omitted) (damages claimed $800,000,000).

Suit brought by developer challenging a municipal ordinance restricting condominium conversions as a conspiracy to eliminate competition.

HELD: Suit still pending.

23. Barton v. *Riverside, California,* (citation omitted) C.D. Cal. 1984) (damages unspecified).

Plaintiff developer brought antitrust suit against city and individual planning board and council members after they refused to extend the termination date of a subdivision map.

HELD: Suit still pending.

Waste Collection and Disposal

1. *Hybud Equipment* v. *Akron,* 654 F.2d 1187 (6th Cir. 1981), remanded in light of *Boulder.* (Damages unknown)

Corporation involved in waste disposal challenged a municipal ordinance monopolizing for the city garbage collection and disposal as well as eliminating competition in the marketplace for recyclable wastes. The city needed this monopoly in order to construct an energy plant using waste material.

HELD: In remand from the Supreme Court, the District Court held that the municipal scheme was protected from the antitrust laws under the state action immunity doctrine. No. C78-1733A (N.D. Oh. April 6, 1983).

2. *Central Iowa Refuse* v. *Des Moines,* 715 F.2d 419 (8th Cir. 1983) (damages unknown).

Action brought challenging a municipal cooperative requirement that all solid waste be brought to municipal landfill. Suit has delayed for over one year construction of municipal landfill.

HELD: The legislature contemplated the imposition of restrictions on competition in the disposal of solid waste in order to promote the financial viability of the metropolitan area solid waste agency and, therefore, the agency's attempt to require that all solid waste generated within the geographic area covered by it be disposed of at its facilities was protected from antitrust scrutiny by the state action exemption. It was not necessary that the state supervise the agency's activities for it to qualify for the state action exemption.

3. *Heille* v. *City of St. Paul,* 671 F.2d 1134 (8th Cir. 1982) (damages unknown).

Action brought by former rubbish collector alleging that the city's entrance into the solid waste collection business and underpricing its service violated antitrust laws.

HELD: The municipal rubbish collection business here challenged had an insufficient nexus with interstate commerce and thus the suit could not be maintained.

4. *D.E.S. Waste Control* v. *City of Carrollton,* No. C82-10-N (N.D. Ga. 1982). ($1,050,000).

Suit challenging the operation of a city industrial waste disposal system. Mayor and City Council members sued individually.

HELD: Suit still pending.

5. *Asher* v. *Doniphan, Mo.,* Civ. Act. No. 582-0097C (E.D. Mo. 1982). (damages of $800,000 claimed.)

Suit brought by individual in the waste disposal business alleging that the municipality's exclusive operation of the waste collection system violated the antitrust laws.

HELD: Suit still pending.

6. *City of Camarillo* v. *Spadys Disposal Service,* 2d Civil No. 6591 (Cal. App. 1983).

City brought suit seeking an injunction to enjoin defendant waste disposal company from hauling waste without a permit.

HELD: The city's refusal to grant permits to more than one company is not an antitrust violation. State statutes

intended to permit cities to create waste disposal systems when such monopolies are in the public interest. The statutes create a state action exemption.

7. *A-1 Carting* v. *City of Albuquerque,* No. 83-07187B (damages unspecified).

Suit brought under Sherman and Clayton Antitrust Acts, challenging municipal monopoly of solid waste collection and removal to land fills.

HELD: Suit still pending.

8. *Ideal Waste Systems* v. *Provo City,* No. 82-082W (D. Ut. 1983). (damages unspecified).

Sherman Act suit brought by corporation engaged in solid waste collection and disposal business. Suit challenges a municipal monopoly on solid waste collection and disposal.

HELD: Suit still pending.

9. *L & H Sanitation* v. *Lake City Sanitation,* No. B-C-82-93 (E.D. Ark. 1983) (damages unspecified).

Sherman Act suit brought by waste disposal company against a competitor and the municipality challenging exclusive award of a franchise to haul and dispose of solid waste.

HELD: State statutes giving municipalities the power to contract for solid waste disposal services, and to regulate solid waste disposal, is sufficient for a state action exemption from the antitrust laws. No need for state statutes to state expressly that monopoly franchises may be awarded.

10. *Windisch* v. *Acenbrack*, No. 79-904-CIV-T-WC. (D. Fla. 1979) (damages unspecified).

Antitrust suit brought against Pinellas County, Florida, alleging that the refusal of the county to grant a permit to operate a landfill violated the antitrust laws.

HELD: County's Motion to Dismiss on state action grounds denied. Trial on merits pending.

11. *Hudson* v. *City of Chula Vista*, No. 83-8151 (9th Cir.) (damages unknown).

Suit brought by potential suppliers of trashhauling services challenging municipal award of exclusive contract to competing trashhauling firms and lack of proper rate regulation.

HELD: Exclusive contract a per se antitrust violation. No state action exemption because there is no active state supervision and no specific explicit state authorization. Case currently on appeal to the 9th Circuit Court of Appeals.

12. *Royal Refuse* v. *Springfield, Oregon*, No. 83-6203-E (D. Or. 1983) (damages claimed $37,000).

Sherman Act suit challenging award of exclusive contract for garbage disposal.

HELD: Suit pending.

13. *Ideal Waste Systems* v. *Orem, Utah*, No. C-83-0900-W (D. Ut. 1983) (damages unspecified).

Sherman Act suit challenging an alleged monopolization by the city of waste collection services.

HELD: Suit dismissed by stipulation.

14. *Scay Brothers* v. *Albuquerque, New Mexico*, CIV-83-0694 (D. N.M. 1983) (damages unspecified).

Suit brought by operator of garbage collection business challenging municipal monopolization of waste disposal business.

HELD: Suit pending.

Hospitals and Ambulance Service

1. *Capital Ambulance* v. *Columbia, South Carolina*, C.A. No. 80-670-0 (D.S.C. 1980) (damages unknown).

Suit by ambulance service operator alleging that the award of tax subsidies by Columbia to a competitor and other similar activities prevented plaintiff from operating within the city.

HELD: Settled by consent decree.

2. *Huron Valley Hospital* v. *City of Pontiac*, 466 F.Supp. 1301 (E.D. Mi. 1979) (damages unknown).

Plaintiff alleged conspiracy among local and state government officials to prevent plaintiff from providing hospital facilities and services in violation of antitrust laws. It was alleged that the failure to issue the necessary permits and certificates was a result of anticompetitive animus.

HELD: Exhaustion of administrative remedies, ripeness, abstention, and comity precluded a review on the merits. In addition, the *Noerr-Pennington* doctrine protected defendants' activities. Remanded, 666 F.2d 1029

(7th Cir. 1982), pending completion of state administrative and judicial proceedings.

3. *United Pacific Ventures* v. *Mercy*, Civ. LV. 80-163, RDF (D. Nev. 1981) (damages claimed $1,260,000).

Plaintiff ambulance company alleged the failure of municipal defendants to license the company was a violation of antitrust laws.

HELD: The complaint's allegations had an insufficient nexus with interstate commerce, and a state statute giving municipalities the power to license ambulance service met the *Parker* state action immunity test.

4. *Gold Cross* v. *City of Kansas City, Mo.*, 705 F.2d 1005 (8th Cir. 1983) (damages unspecified).

Plaintiff alleged that the award of an exclusive franchise to operate an emergency ambulance service within the city limits violated antitrust laws.

HELD: State statute authorizing municipalities to contract with companies to provide emergency services was a sufficient state action exemption under *Parker*. The state need not mandate the anticompetitive conduct, it only needs to contemplate such conduct. There is no need for active state supervision. Petition for Certiorari pending.

5. *Professional Ambulance* v. *Hartford*, No. H82-970 (D. Ct. 1982) and *Trinity Ambulance* v. *Hartford*, No. H82-969 (D. Ct. 1982).

Antitrust action alleging that the city's award of contracts to two companies to provide exclusive emergency ambulance services violated the Sherman Act. The city awarded the contracts after a competitive bidding process undertaken pursuant to a state statute.

HELD: Suit still pending.

6. *Springs Ambulance* v. *Rancho Mirage, Indian Wells, et al.*, No. 82-5917 (damages unspecified).

Plaintiff ambulance service brought suit under the Sherman Act alleging a concerted refusal to deal and an unreasonable restraint of trade in the provision of emergency ambulance services.

HELD: State statutes regulating emergency services do not encompass price-fixing and predatory pricing practices allegedly carried on by the defendant municipalities. Ambulance services have sufficient nexus with interstate commerce to maintain federal jurisdiction. Case currently on appeal to 9th Circuit.

7. *Feldman* v. *Jackson Memorial*, 571 F.Supp. 1000 (S.D. Fla. 1983) (damages unknown).

Podiatrist brought Sherman Act suit against various private and public hospitals alleging a combination or conspiracy in restraint of trade by their refusing to grant plaintiff staff hospital privileges.

HELD: Evidence wholly failed to show a combination or conspiracy in restraint of trade, nor was there a showing of market impact or fact of damage. Directed verdict granted all defendants, obviating need for a decision on the public hospitals claimed state action immunity.

8. *Federal Ambulance* v. *Sioux Falls, South Dakota* (D. S.D. 1983) (damages claimed $165,000).

Plaintiff ambulance company brought suit under Sherman Act alleging that city and other companies conspired to monopolize ambulance services.

HELD: Suit pending.

9. *Springs Ambulance* v. *Indio, California,* (citation omitted) (damages unspecified).

Same facts as No. 6 above.

HELD: Suit pending.

10. *Patient Transfer* v. *Little Rock, Arkansas, et al.,* No. LR-C-84-161 (E.D. Ark. 1984) (damages claimed $150,000).

Plaintiff ambulance operator brought Sherman Act suit challenging municipal ordinances establishing an ambulance licensing procedure whereby only one company may be granted a license to operate within the city. The suit also challenges a fee placed on current operators pending the establishment of monopoly service.

HELD: Suit still pending.

Water and Sewage Systems

1. *Community Builders* v. *City of Phoenix,* 652 F.2d 823 (9th Cir. 1981) (damages claimed $1,536,000).

Antitrust action brought to challenge hook-up fees for provision of municipal water service outside municipal boundaries.

HELD: Defendant's motion for summary judgment granted. State policy prohibiting competition between municipal utility services and other utility providers constituted state action exemption under *Parker* and *Lafayette.*

2. *Tuld* v. *City of Scottsdale and City of Phoenix,* 665 F.2d 1054 (9th Cir. 1981) ($750,000).

Suit brought challenging municipal charges for water hook-up.

HELD: Court held in favor of city; decision in *Community Builders, supra,* dispositive (lower court affirmed without opinion).

3. *Shrader* v. *Horton,* 626 F.2d 1163 (4th Cir. 1980), affirming 471 F. Supp. 1236 (W.D. Va. 1979) (damages unknown).

Antitrust suit challenging compulsory hook-up with municipal water system.

HELD: State statute requiring owners of land abutting a street with a public water supply line to connect to such line is sufficient to establish state action exemption under *Parker.*

4. *Howland Township* v. *City of Warren,* C.A. No. 81-954 (N.D. Oh. 1981) (damages claimed $1,890,000).

Antitrust action brought challenging a municipal policy of providing water only to municipal residents.

HELD: Defendant's motion to dismiss pending.

5. *Town of Hallie* v. *City of Eau Claire,*700 F.2d 376 (7th Cir. 1983) (damages unknown).

Antitrust action brought by towns against a city which required the towns to annex to the city in order to tie into the sewer system.

HELD: State law giving cities broad discretionary powers over sewer systems immunized the city's annexa-

tion policy. No active state supervision needed for state-action exemption to apply. State need not mandate or compel anticompetitive conduct; all that is needed is authorization or contemplation of anticompetitive conduct. Case pending in Supreme Court to which this brief is addressed.

6. *Coral Ridge* v. *City of Margate,* No. 83-6267 (S.D. Fla. 1983). ($30,000,000 damages claimed).

Suit alleges that the city of Margate is utilizing a legally recognized monopoly for water and sewer, granted to it by state statute, in furtherance of a conspiracy with its electorate. This conspiracy is to provide for prepayment of capacity reservation charges to be utilized for the construction of new plant capacity thereby keeping monthly user charges at a lower rate.

HELD: Suit settled.

7. *LaSalle National Bank* v. *DuPage, Lisle, and Woodridge,* No. 82-6517 (N.D. Ill. 1982). (damages claimed $75,000,000).

Sherman Act suit brought by trustee bank against three municipalities alleging various contracts and conspiracies in restraint of trade. Suit challenges, inter alia, a municipality's refusal to provide water service without annexation, as well as a Boundary Line Agreement entered into by two defendants.

HELD: State statutes giving municipalities the power to contract and associate among themselves was not sufficient to warrant state action immunity since anticompetitive conduct was not authorized by the statute, or by cooperative agreement. Motion for Reconsideration pending.

8. *City of Northglenn* v. *City of Thornton,* No. 83-1058 (D. Colo. 1983) (damages unknown).

Suit by municipality against another municipality challenging, on antitrust grounds, a contractual provision whereby the plaintiff municipality agreed not to provide sewer services outside the municipal boundary if the defendant municipality was able to provide such service.

HELD: Preliminary injunction denied. Suit still pending.

9. *Vickery Manor* v. *Mundelein,* 575 F.Supp. 996 (N.D. Ill. 1983) (damages unknown).

Suit brought under §3 of the Sherman Act by landowners and corporation engaged in sewage treatment business. Suit alleges that the municipality thwarted a potential sale of land to developers by seeking to impose various onerous and anticompetitive restrictions on the developer, including requiring him to purchase the sewer corporation and then requiring the developer to cease serving certain areas and to take over service of certain unprofitable areas.

HELD: State statutes giving municipalities the power to own and operate sewer systems, and to regulate streets, is an insufficient grant of authority for a state action exemption. The state statutes do not explicitly or implictly authorize anticompetitive activities.

10. *LaSalle National Bank* v. *County of Lake,* 579 F.Supp. 8 (N.D. Ill. 1984) (damages claimed $15,000,000).

Plaintiff landowners brought suit alleging that several municipal defendants engaged in a conspiracy to deny sewer service to plaintiffs' land in order to prevent development.

HELD: Same judge and same result as #9 above.

11. *Unity Ventures* v. *County of Lake,* No. 81-C2745 (N.D. Ill. 1984) ($28.5 million awarded).

Suit brought by landowner under §§1 and 2 of the Sherman Act against various local governments and local government officials. It was alleged that the plaintiff was deprived of his right to develop land because of a refusal to extend sewer services to his property.

HELD: Jury verdict for $28.5 million for plaintiffs. Post trial motions pending.

12. *East Naples Water System* v. *Collier County,* (citation omitted) (damages unspecified).

The developer and owner of a water and sewer plant alleges that the County, in attempting to develop a central water and sewer system, is engaging in monopolistic activities. In addition there is an allegation of illegal tying in that the developer's zoning approval contains various utility conditions dealing with ownership of lines, customer costs, and water and sewer impact fees.

HELD: Suit pending.

13. *Sanders* v. *Tuscaloosa, Alabama,* No. CV-84-P-1709-W (damages claimed $2,000,000).

Suit brought under Sherman Act against city and various local officials challenging city's refusal to provide sewer services absent annexation.

HELD: Suit still pending.

14. *Lewis Y El' honen* v. *County of Wayne and Twp. of*

Van Buren, Michigan, 78-71590 (E.D. Mich. 1978) (damages claimed $3,000,000).

Suit brought by developer challenging the municipalities' refusal to connect their sewer system to plaintiff's property.

HELD: Suit still pending.

15. *La Salle National Bank* v. *County of Lake, et al.,* No. 81-C 3160 (N.D. Ill. 1981) ($60,000,000 damages claimed).

Plaintiff developers brought suit against two municipalities, 47 past or present municipal board members, and two mayors, alleging that a refusal to extend municipal sewer service to plaintiff's property violated Sections 1 and 2 of the Sherman Act.

HELD: Suit pending.

Airport Services and Concessions

1. *Pueblo Aircraft* v. *City of Pueblo,* 679 F.2d 805 (10th Cir. 1982) (damages unknown).

Antitrust suit brought by an unsuccessful applicant for concession space at a municipal airport.

HELD: State statute authorizing municipalities to acquire and operate municipal airports and declaring such operations to be governmental functions is sufficient to establish state action exemption under *Parker* and *Boulder*. The Supreme Court has denied certiorari.

2. *Greyhound* v. *City of Pensacola,* 676 F.2d 1380 (11th Cir. 1982) (damages claimed $1,500,000).

Disgruntled franchisee alleged that denial of a license to operate a rent-a-car facility at the municipal airport violated antitrust laws.

HELD: Evidence did not support contract, combination or conspiracy in violation of Sherman Act on theory that successful bidder induced city to insert national specifications in bid package. The Supreme Court has denied certiorari.

3. *Woolen* v. *Surtran Taxicabs, Inc.*, 461 F.Supp. 1025 (N.D. Tex. 1978) (damages claimed $9,000,000).

Action brought challenging single operator award for ground transportation at municipal airport.

HELD: Motion to dismiss denied. State statute authorizing municipalities to establish and operate airports and to contract for the provision of services and home rule statute were not sufficient to etablish state action exemption under *Parker*. Class certified. Appeal of denial of motion to intervene pending.

4. *B & W Aero Corp.* v. *Manchester Arport,* Civ. No. 80-427-D (D.N.H. 1981) (damages claimed $3,000,000).

Antitrust action brought challenging the sale of fuel by the municipality at the municipal airport.

HELD: Motion to dismiss granted.

5. *Pinehurst Airlines* v. *Resort Air Services,* 476 F.Supp. 543 (M.D.N.C. 1979) (damages unknown).

Action brought alleging county's award of an exclusive grant to a fixed base operator violated antitrust laws.

HELD: Motion to dismiss denied. State statute

authorizing the granting of concessions to supply goods and services, provided that the public is not deprived of its rightful, equal and uniform use thereof, was not sufficient to establish state action exemption under *Parker*.

6. *Guthrie* v. *Genessee County,* 494 F.Supp. 950 (W.D. N.Y. 1980) (damages unknown).

Suit brought alleging that county's award of an exclusive operating agreement at the municipal airport violated antitrust laws.

HELD: Motion to dismiss denied. State statute authorizing county to establish and operate an airport and to enter into exclusive agreements for the provision of services was not sufficient to establish state action exemption under *Parker*.

7. *Independent Taxicab Drivers' Employees* v. *Greater Houston Transportation Corp. and City of Houston; Arrow Northwest, Inc.* v. *Greater Houston Transportation Co. and City of Houston,* No. H-79-2285 and No. H-80-1630 (consolidated) (damages claimed in excess of $114,000,000).

Suits alleging antitrust violations in award of airport taxicab concession contracts. Motion for summary judgment denied; cases pending on dual motions for class certification.

8. *All-American Cab* v. *Metropolitan Knoxville Airport,* 547 F.Supp. 509 (E.D. Tenn. 1982), affirmed, No. 82-5612 (6th Cir. 1983) (damages unknown).

An antitrust action alleging that the municipal airport authority and the dispatcher of airport ground transporta-

tion entered into contracts monopolizing airport ground transportation.

HELD: The airport authority, acting under authority granted by the state was protected by the doctrine of sovereign immunity and could not be found liable under the antitrust laws. Governmental activities not subject to antitrust laws.

9. *Alphin Aircraft* v. *Henson,* Civ. Act. B-81-227 (D. Md. 1981)(damages unknown).

Suit involves action under the Sherman Act alleging attempts to monopolize fixed base operations at a municipal airport.

HELD: Alphin v. *Henson,* 392 F.Supp. 813 (D. Md. 1975, no antitrust violations prior to 1975. The current suit, alleging more recent violations, is still pending.

10. *Transport Limousine* v. *Port Authority of New York and New Jersey,* 571 F.Supp. 576 (E.D.N.Y. 1983) ($16,500,000 damages claimed).

Action brought by limousine operator challenging the Port Authority's 8% gross receipts fee. Suit alleges that the fee imposed is a monopoly price violation under the Sherman Act and is part of a conspiracy in restraint of trade.

HELD: The District Court found no agreement or conspiracy in restraint of trade with respect to the tax. The Port Authority, a state created agency, is entitled to state action immunity. Affirmed in Court of Appeals.

11. *Charley's Taxi* v. *Radio Dispatch,* 562 F.Supp. 712 (D. Hawaii 1983) (damages unknown).

Antitrust suit brought by taxicab company challenging exclusive contract to provide metered taxicab services at state owned airport.

HELD: While the state may fix charges or rentals, there is no evidence that the state intended the Director of Transportation to have the authority to enter into exclusive contracts. The contract is thus not protected from antitrust attack by the state action doctrine.

12. *Hill Aircraft* v. *Fulton County,* 561 F.Supp. 667 (N.D. Ga. 1983) (damages unknown).

Suit by fixed base operator against municipal airport authority, challenging the authority's allocation of space.

HELD: There was no antitrust violation. Plaintiff failed to show any anticompetitive effect in space allocation, nor did plaintiff show that there was any attempt to monopolize.

13. *Pontarelli* v. *City of Chicago,* No. 83-C-6716 (N.D. Ill. 1983) (damages unknown).

Clayton Act and Sherman Act (§§1 and 2) suit brought by licensed limousine operators against municipality and competing licensed limousine providers challenging the municipality's grant of rent-free booth and solicitation privileges at O'Hare Airport to defendant operators while denying same privilege to plaintiffs.

HELD: Suit still pending.

14. *O'Hare Wisconsin* v. *Chicago,* No. 84-C-0995 (N.D. Ill. 1984) ($7,100,00 damages claimed).

Action by bus company against city and competitor

alleging Sherman Act violation in the city's refusal to permit plaintiff to solicit or receive bus passengers at airport.

HELD: Suit still pending.

15. *C.W. Limousine* v. *Chicago,* No. 84-C-1232 (N.D. Ill. 1984) (damages unspecified).

Suit brought by bus company under Sherman Act against the city and a competitor challenging city's refusal to permit plaintiff to advertise its services and solicit passengers at airport.

HELD: Suit pending.

16. *Falk* v. *Chicago,* No. 84-C-2995 (N.D. Ill. 1984) (damages unspecified).

Class action under Sherman Act challenging exclusive award of contract for bus services between airport and the city.

HELD: Suit pending.

17. *Lorrie's Travel* v. *City and County of San Francisco, et al.,* No. C83-0666 TEH (N.D. Cal. 1983) (damages claimed $13,000,000).

Suit brought by tour company challenging the award of an exclusive contract to provide ground transportation to and from the airport.

HELD: Case on appeal to Ninth Circuit after grant of defendant's motion to dismiss.

18. *Alamo Rent-A-Car* v. *Sarasota Manatee Airport Authority,* No. 82-836-Civ-T-H (Injunctive relief only).

Sherman Act suit alleging that airport authority has conspired with other companies to impose a charge on off-site rental companies.

HELD: Antitrust claims dismissed.

19. *Platt* v. *Easton, Md.,* No. HM 83-3104 (D. Md. 1983) (damages unspecified).

Airport fixed base operator brought suit against the city airport operator alleging that the town conspired to put the plaintiff out of business.

HELD: Suit voluntarily dismissed.

20. *F & L Flight, Inc.* v. *City of Dixon, Illinois,* No. 82 C 20085 (N.D. Ill.) and *Dixon Aviation* v. *City of Dixon, Illinois,* No. 81C 20110 (N.D. Ill.) (damages claimed $3,360,000).

Suits brought by a fixed base operator and a supplier against municipality, the mayor, and a municipal board challenging their refusal to accept Dixon Aviation's FBO bid.

HELD: Dixon Aviation dismissed on state action immunity grounds. *F & L Flight* still pending.

21. *Plaza Rent-a-Car* v. *City of McAllen, Texas, et al.,* No. B-83-2761 (S.D. Tex. 1983) (damages claimed $6,000,000).

Suit against the municipality, the city manager, and the airport manager alleging a conspiracy in restraint of trade with national car rental agencies through contractual obligations which exclude local rental agencies from municipal airport space.

HELD: Suit pending.

Utility Services

1. *Morrow* v. *Mrs. Smith,* 540 F.Supp. 1104 (S.D. Oh. 1982) (damages claimed $2,225,000).

Antitrust action brought against city concerning the termination of services for nonpayment of utility bill. The city does not own the utility but is merely the franchisor.

HELD: City's motion to dismiss antitrust allegations for failure to state a claim granted. Even if allegations were well pleaded, plaintiffs probably lack standing since there is no causal connection between alleged injury and illegal antitrust violation. Moreover, state action exemption may apply.

2. *City of Gainesville* v. *Florida Power & Light Co.,* 488 F.Supp. 1258 (S.D. Fla. 1980) (damages unknown).

Antitrust suit brought against electric utility by consortium of cities alleging antitrust violations. Utility counterclaimed alleging antitrust violations by cities.

HELD: Counterclaims dismissed without prejudice for failure to comply with pleadings requirements. Court dismissed pleading requirements for the *Noerr-Pennington* "sham" exception.

3. *City of Groton* v. *Connecticut Light & Power Co.,* 497 F.Supp. 1840 (D. Del. 1980), modified, 662 F.2d 921 (2d Cir. 1981) (damages unknown).

Antitrust suit brought by municipalities against investor-owned utilities supplying electric power to municipalities. Utilities counterclaimed, alleging antitrust violations by cities.

HELD: Municipalities' participation in proceedings alleging federal antitrust violations did not constitute anticompetitive conduct.

4. *City of Newark* v. *Delmarva,* 497 F.Supp. 323 (D. Del. 1980) (damages unknown).

Municipalities sued electric utility alleging antitrust violations. Utility counterclaimed alleging antitrust violations by municipalities.

HELD: Motion to dismiss counterclaim granted. Municipalities' actions were shielded by *Noerr-Pennington* doctrine.

5. *Rural Electric* v. *Cheyenne,* No. 82-0416 (D. Wyo. 1982) (damages unknown).

Suit brought by electric company alleging that the municipality and individual municipal officials violated the antitrust laws by granting an exclusive franchise to a competitor.

HELD: Suit still pending.

Towing Services

1. *Sherrer* v. *City of Huntington Beach,* No. CV-80-826-MML (C.D. Cal. 1981) (damages unknown).

Action brought challenging the city's refusal to put a company on its list of eligible companies for police-directed towing services.

HELD: Summary judgment for defendant granted. Since all towing occurs on intrastate roadways and the

towed cars are brought to a storage lot within the city, the municipal activity does not have a sufficient nexus with interstate commerce to permit subject matter federal court jurisdiction.

2. *Shurtleff* v. *San Jose,* 698 F.2d 1232 (9th Cir. 1983) (damages claimed $3,000,000).

Antitrust suit brought challenging refusal to include a towing company on the city's rotation list for city-directed towing.

HELD: The municipality, as a purchaser of services, cannot be a conspirator under the antitrust laws.

3. *Kendrick* v. *Augusta, Georgia,* C.A. No. 179-266 (S.D. Ga. 1981) (damages unknown).

Losing bidder for contract to tow abandoned cars from city streets brought suit challenging award of contract to successful bidder.

HELD: City's motion for summary judgment granted for 'ack of federal subject matter jurisdiction (plaintiff failed to show substantial effect upon interstate commerce).

4. *Fryer's Wrecker, et al.* v. *Daytona Beach, Florida* No. 84-140-Civ-Orl-11 (M.D. Fla. 1984) (damages unspecified).

Disappointed bidder alleging an illegal restraint of trade, brought Sherman Act suit against city challenging award of bid for police directed towing to a better bidder.

HELD: Suit pending.

5. *Mabe* v. *Galveston, Texas,* No. G-83-302 (S.D. Tex. 1983) (damages unspecified).

Individual refused permit for automobile wrecker business under a "public convenience and necessity" standard brought suit under the Sherman Act challenging the denial.

HELD: Suit pending.

6. *El Paso Wrecker* v. *El Paso, Texas,* No. EP-82-CA-276 (damages claimed $1,500,000).

Suit brought by wrecker company alleging that the city boycotted the wrecker service in city towing business.

HELD: Suit settled.

Mass Transit

1. *Crocker* v. *Padnos,* 483 F.Supp. 229 (D. Mass. 1980) (damages claimed $1,500,000).

Suit brought by unsuccessful bidder for contract to provide bus transportation for city alleging antitrust violations in award of contract.

HELD: City's motion to dismiss granted. Conduct engaged in as an act of government by the state as sovereign or by its subdivisions, pursuant to state policy, is exempt from federal antitrust laws. Formation of transit authority pursuant to state statute indicates state's policy to displace competition.

2. *City of North Olmstead* v. *Greater Cleveland Regional Transit Authority,* 722 F.2d 1284 (6th Cir. 1983) (damages unknown).

A municipality brought suit under the Sherman Act against the regional transit authority, alleging violations of the Sherman Act through the authority's attempts to monopolize public transit in the region.

HELD: State statutes establishing the regional transit authority indicated that the state legislature intended to authorize monopoly public transit services.

3. *Monte Gibson, et al.* v. *Park City Municipal Corporation, et al.*, No. C-81-0823W (D. Ut. 1981) (damages claimed $9,000,000).

Plaintiff hotel developer alleged that the city conspired with other hotel operators by moving a bus stop 100 yards into a central transportation center and delaying approval of buiding permits.

HELD: After two years of discovery and $250,000 in attorneys' fees, summary judgment was granted defendants. Appeal pending in Ninth Circuit.

Licenses and Concessions

1. *Cincinnati Riverfront* v. *City of Cincinnati,* C.A. No. C-1-82-128 (S.D. Ohio) (damages claimed $3,000,000).

Suit by a disgruntled lessee of a municipally owned parking facility over the terms of the lease restricting the scheduling of events at a privately owned coliseum. The lease restricts events at the coliseum held simultaneously with events at the nearby stadium leased by the municipality.

HELD: Defendant's motion for summary judgment under the state action exemption denied, 556 F. Supp. 664 (S.D. Oh. 1983). Trial verdict in favor of defendants. Appeal pending.

2. *Kurek* v. *Park District of Peoria,* 557 F.2d 580 (7th Cir. 1977), reinstated, 583 F.2d 378 (7th Cir. 1978), cert. denied, 439 U.S. 1090 (1979) (damages unknown).

Suit brought alleging that various activities of municipality in award of franchise to operate concession business at municipal golf course were in violation of antitrust laws.

HELD: Evidence failed to establish a violation of antitrust laws.

3. *Contract Marine Carriers* v. *City of Richmond,* No. 83-0231-R (E.D. Va. 1983) (damages claimed $15,000,000).

Suit by user of municipal port against municipality and corporation which contracted to manage municipal port, alleging that excessive rates were charged to plaintiff port user and that the defendants contracted and conspired to monopolize port operations.

HELD: Suit still pending.

4. *University Wines* v. *Boulder,* No. 83-K-1199 (D. Colo.1983) (damages unknown).

Suit brought by applicant for liquor license challenging the municipality's refusal to grant plaintiff a liquor license. Suit alleged conspiracy in restraint of trade between municipality and current holder of licenses.

HELD: Motion to Dismiss granted. State statutes regulating alcohol immunize defendants. No evidence of concerted action. Alcohol licensing is a quasi-judicial function entitled to judicial immunity. Appeal expected.

5. *William Mirshak* v. *Jeremiah Joyce,* No. 83-C-6716 (N.D. Ill. 1983) (damages claimed $3,000,000).

Suit brought against individual police officers and alderman who allegedly conspired to prevent plaintiff from obtaining a liquor license and harassing plaintiff.

HELD: Suit still pending.

6. *Pizza Inn* v. *Irving, Texas* (citation omitted) (damages claimed $6,000,000).

Suit brought by property owner challenging a denial of a rezoning application which resulted in plaintiff's inability to obtain a liquor license.

HELD: Suit settled after plaintiff was awarded rezoning.

Contracts

1. *Suttles* v. *City of Dayton,* No. 76 1055 (Oh. Comm. Pls. (damages claimed $3,000,000).

Suit involved an award of a contract for security services at a park.

HELD: Case settled.

2. *Southwest Concerts, Inc.* v. *Arena Operating Co., et al.*,No. H-79-457 (S.D. Tex. 1979) (damages claimed $1,500,000).

Action brought by concert promoter alleging antitrust violations in city of Houston's leasing arrangements for city-owned concert hall.

HELD: Motion for summary judgment pending.

3. *Englert* v. *City of McKeesport,* 736 F.2d 96 (3rd Cir. 1984) (damages unknown).

Sherman Act suit challenging municipal decision to contract out all municipal electrical inspection work with one company.

HELD: Plaintiff alleged sufficient facts in order to establish that interstate commerce was adversely affected, as required to establish the necessary jurisdictional prerequisites. Remanded for trial.

4. *Hoffman* v. *Glendale Heights,* 581 F.Supp. 367 (N.D. Ill. 1984) (damages claimed $375,000).

Antitrust suit brought by disappointed bidder on municipal construction project alleging a conspiracy between successful bidder and the municipality in the award of the contract.

HELD: State statutes authorizing municipalities to waive competitive bidding on projects such as the one herein is sufficient grant of authority for state action exemption to apply. In addition, a state statute granting to local governments a "state action exemption" to the application of the federal antitrust laws supports the grant of immunity.

5. *Shay* v. *City and County of San Diego,* No. 83-26281 (S.D. Cal. 1983) (damages claimed $800,000,000).

Suit brought alleging the existence of a conspiracy to deny plaintiff the opportunity for service and repair contracts for computer data processing equipment.

HELD: Suit dismissed for lack of jurisdiction.

6. *Phone Program* v. *New York Off Track Betting Corporation, et al.,* 83 CIV 1486 (S.D. N.Y. 1983) (damages claimed $1,207,737).

Plaintiff alleges that it was precluded from bidding on a contract because it did not meet all the contract specifications.

HELD: Suit still pending.

7. *Eastway Construction* v. *City of New York,* 84 CIV 0690 (S.D. N.Y. 1984) (damages claimed $1.2 billion).

Suit brought against city and numerous officials alleging a conspiracy between city and a mortgage lender to deny plaintiff city construction work.

HELD: Suit still pending.

8. *Driscoll* v. *City of New York,* 82 CIV 8497 (S.D. N.Y. 1982) (damages claimed $20,000,000).

Suit brought alleging a conspiracy to monopolize and monopolization as a result of a restrictive covenant contained in a lease between the city and a bus line.

HELD: Suit still pending.

Telephone

1. *Jackson* v. *Taylor,* 539 F. Supp. 593 (D.D.C. 1982) (damages unknown).

Suit by prisoners against municipal jailer alleging price-fixing of telephone calls from prison.

HELD: The operation of a prison is not generally susceptible to antitrust suits. See *Jordan* v. *Mills,*473 F.Supp. 13 (E.D. Mich. 1979).

2. *Capital Telephone* v. *City of Schenectady,* 560 F.Supp. 207 (N.D. N.Y. 1983) (damages unknown).

Suit brought by a telephone company under the Sherman Act alleging the municipality and various municipal officials violated the antitrust laws by denying the company of a franchise to provide line telephone service to the municipality.

HELD: Municipal action was protected by the state action exemption since a state statute explicitly authorized the city to review and act upon franchise applications.

Taxicabs

1. *Independent Taxi* v. *Kansas City,* No. 81-0692-CV-4 (W.D. Mo. 1981) (damages unknown).

Suit involves the municipal regulation of the number of taxicabs permitted to operate.

HELD: Suit voluntarily dismissed by plaintiff without prejudice.

2. *Golden Gate Transit* v. *Los Angeles,* 726 F.2d 1430 (9th Cir. 1984) (damages unknown).

Suit brought by taxicab company challenging city licensing and ratemaking regulations and its failure to renew the company's license.

HELD: State statutes authorizing municipal regulation of taxicabs immunize municipal regulation of taxicabs and antitrust laws. Direct municipal regulation satisfies the "active supervision" requirement. Affirmed by Ninth Circuit Court of Appeals.

3. *Campbell* v. *City of Chicago,* 577 F.Supp. 1166 (N.D. Ill. 1983) (damages claimed $320,000,000).

Suit brought by taxicab operator challenging agreement between municipality and private taxicab operators limiting number of licenses issued.

HELD: State statute authorizing municipal licensing of taxicab services not specific enough to satisfy "clear articulation" requirement. No state action immunity. Interstate nexus test met.

4. *Bates* v. *Kansas City, Missouri, et. al.*, No. 83-1311-CV-W-3 (W.D. Mo. 1983) (damages unspecified).

Sherman Act suit against city alleging a conspiracy to limit the number of taxicab permits.

HELD: Ordinance fixing number of permits removed by city as part of settlement.

5. *CAB Drivers* v. *San Diego, California*, NO. 505902 (Superior Court of California) (injunction only).

Sherman Act suit brought challenging municipal regulation of taxicab fares.

HELD: Judgment for City.

Parking

1. *Corey* v. *Look*, 641 F.2d 32 (1st cir. 1981) (damages unknown).

Parking lot operator brought suit under Sherman Act, alleging that municipality and a steamship authority conspired to eliminate plaintiff as a competitor in the parking market.

HELD: The municipality is not immune from suit under the state action exemption doctrine. Suit was subsequently settled.

Police Power

1. *Lucky Lady Card Room* v. *San Diego, California, et al.*, (citation omitted) (injunction relief only).

Suit brought against city and police chief alleging that an ordinance regulating cardrooms is an illegel restraint of trade.

HELD: Suit pending.

2. *Jim Fant Properties* v. *Virginia Beach, Virginia*, No. CA-83-851-N (D. Va. 1983) (damages claimed $2,500,000).

Suit brought alleging a conspiracy to restrain trade by adopting an ordinance allegedly restricting the advertising of hotel rates in the tourist district.

HELD: Antitrust portion of the suit dismissed with prejudice.

3. *Eshelman* v. *Culver City, California*, No. CV-82-0840 (C.D. Cal. 1982) (damages unspecified).

Suit brought under Sherman Act challenging a municipal ordinance restricting permits for sale of fireworks to veterans' groups. Individual councilmen were also defendants.

HELD: Settled by paying $12,500.00 to plaintiff.

4. *Johns Niagara Hotel* v. *Niagara Falls, New York*, No. CIV-83-1448 (W.D. N.Y. 1983) (damages claimed $15,000,000).

Suit brought by hotel operator alleging a conspiracy among the city and other hotel operators to monopolize the hotel and convention business in Niagara Falls.

HELD: Suit still pending.

5. *Harrowgate String Band* v. *Philadelphia New Year's Shooters, et al.*, C.A. 84-2736 (E.D. Pa. 1984) (damages unspecified).

HELD: Suit still pending.